IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23069 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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LAKASHI SUKA DAMOR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR BS BRAHMBHATT for the Petitioner
MS RITA CHANDARANA, Assistant Government Pleader for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/02/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged the action of the respondents in not protecting his pay fixation and action of recovery of Rs. 20678/- (Rupees Twenty Thousand Six Hundred and Seventy

Eight only) on the ground that the petitioner was paid the said amount in excess of his entitlement.

2. The petitioner was appointed as a Armed Police Constable on 12.11.1962. He did not receive any promotion during his service career. The petitioner eventually, retired on superannuation on 30.06.1994.

2.1 To obviate difficulties of large number of government employees who, on account of non availability of promotional posts, were stagnated in their cadre for long period of time, the State Government passed Resolution dated 06.05.1992 by which certain benefits of Higher Pay Scales were to be granted to government servants upon stagnation in the same cadre for certain number of years of service. It appears that thereafter, subsequent resolution came to be issued on 16.08.1994 whereby the government was pleased to make modifications in the earlier Resolution dated 06.05.1992. Certain conditions for grant of higher pay-scales were made more stringent. It was however provided in clause 3(28) of the said Resolution dated 16.08.1994 that for those employees, who have retired prior to 01.08.1994, in their cases it will not be necessary to effect recovery of pay

already made nor their pay fixation be required to be modified. It was further provided that those employees who have retired on 31.07.1994, and are not granted the benefit of Higher Pay fixation on account of administrative reasons, in such cases they will be entitled to receive higher pay fixation as per the resolution prevailing prior to issuance of the said resolution. Their pension also shall have to be fixed accordingly. It was clarified that in case of such employees having second and third higher pay fixation granted and the pension so fixed, recovery thereof is waived.

3. It is the case of the petitioner that he retired with effect from 30.06.1994 i.e. after the earlier resolution dated 06.05.1992 issued by the government but before the cut-off date 01.08.1994 envisaged for protecting pay scales and pensionery benefits under clause 3(28) of the Government Resolution dated 16.08.1994. It is, therefore, the case of the petitioner that the respondents erred in ordering the recovery of the so called excess pay and also erred in fixing the pension of the petitioner on the basis of erroneous altered pay fixation.

4. The respondents have filed affidavit-in-reply. The fact that the petitioner retired on 30.06.1994 is however not denied. It would, therefore, appear that the petitioner retired prior to cut-off date 01.08.1994. His case is therefore, covered under clause 3(28) of the resolution dated 16.08.1994. The benefit of Higher Pay Scale granted pursuant to resolution dated 06.05.1992 therefore, was not require to be altered or affected in any manner. The respondents in my view erred in applying the resolution dated 16.08.1994 to the petitioner for the purpose of his correct fixation as per the said resolution. Consequently, the pension fixation of the petitioner would also suffer on account of such erroneous readjustment of his pay.

5. It is not in dispute that recovery of excess amount of Rs. 20678/- was made from the petitioner way back in the year 1994. The petitioner has filed the present petition in the year 2005. By sheer afflux of time, the petitioner is disentitled for reclaiming the said amount. The question of pension entitlement to the petitioner however, stands on different footing. The respondents cannot escape the liability of recorrecting pay fixation of the petitioner as per the resolution dated 06.05.1992

and consequently, refixing the pension of the petitioner from the date of his retirement.

6. In the result, the petition is allowed partly. The request of the petitioner for reimbursement of the amount of Rs. 20678/- is turned down. The petitioner will however, have his pension refixed as per the observations made hereinabove by applying clause 3(28) of resolution dated 16.08.1994. The pay of the petitioner will be notionally refixed and his pension will be accordingly, corrected. The petitioner will receive the pension on the basis of such refixation. He will be also entitled to arrears of pension, however without any interest.

7. The petition is allowed to the above extent. Above steps shall be undertaken within a period of three months from the date of receipt of copy of this order. The petition is disposed of. Rule is made absolute to the aforesaid extent. Direct service permitted.

[Akil Kureshi, J.]

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